

SUBCOMMITTEE NO. 3

Agenda

Chair, Senator Denise Moreno Ducheny
Senator Dave Cox
Senator Wesley Chesbro



HEARING OUTCOMES

Agenda – Part “B”

(Including Agenda – Part “B” ADDENDUM)

Thursday, May 18, 2006
1 p.m.

John L. Burton Hearing Room (4203)
Consultant, Brian Annis

Labor Agency Departments

<u>Item</u>	<u>Department</u>	<u>Page</u>
7100	Employment Development Department.....	1
7350	Department of Industrial Relations	4
7350	Department of Industrial Relations (Trailer Bill Language).....	7
7350	Department of Industrial Relations (ADDENDUM)	9

Pursuant to the Americans with Disabilities Act, individuals who, because of a disability, need special assistance to attend or participate in a Senate Committee hearing, or in connection with other Senate services, may request assistance at the Senate Rules Committee, 1020 N Street, Suite 255 or by calling 916-324-9335. Requests should be made one week in advance whenever possible.

7100 Employment Development Department

The EDD was previously heard in Subcommittee #3 on April 27, 2006.

Recommended Vote-Only Issues:**Issue 1: Program Benefit Adjustments (May Revision Requests)**

Description: The Administration requests budget adjustments to reflect revised estimates of benefit expenditures in the current year and budget year. The adjustments are a result of recent benefit claim levels and of the May 2006 forecast of future claims. None of these changes affects the General Fund – all costs in these areas are funded by employer and employee taxes.

- **Unemployment Insurance (UI):** Benefit payments are estimated to decrease by \$295.5 million in 2005-06 (to \$5.077 billion) and decrease by \$65.0 million in 2006-07 (to \$5.258 billion). Operations expenditures are proposed to decrease by 33.8 temporary-help personnel years and \$2.2 million in 2005-06 and decrease 20.1 temporary-help personnel years and \$1.3 million in 2006-07. Additionally, the Administration requests a related decrease of 9.6 temporary-help personnel years and \$800,000 for the California Unemployment Insurance Appeals Board in 2005-06, and a decrease of 8.2 temporary-help personnel years and \$686,000 in 2006-07.
- **Disability Insurance (DI) Program:** Benefits payments are estimated to decrease by \$111.4 million (to \$4.183 billion) in 2005-06 and decrease by \$105.5 million (to \$3.925 billion) in 2006-07. Operations expenditures are proposed to decrease by 14.5 personnel years and \$918,000 in 2005-06 and decrease 34.6 personnel years and \$2.2 million in 2006-07. Additionally, the Administration requests a related decrease of 4.8 temporary-help personnel years and \$434,000 for the California Unemployment Insurance Appeals Board in 2005-06, and a decrease of 6.0 temporary-help personnel years and \$542,000 in 2006-07.
- **School Employees Fund Program:** Benefits payments are estimated to decrease by \$11.8 million (to \$91.6 million) in 2005-06 and not change from the budgeted amount of \$97.0 million in 2006-07. No staffing changes are requested in either year.

Detail / Background: The Administration submits a May Revision request for EDD benefit adjustments every year. If the estimates of benefit payments turn out to be too low, budget bill language allows for upward revision of the appropriations with approval of the Director of Finance and notification to the Legislation. Revisions are not subject to requirements of Budget Control Section 28.00.

Staff Recommendation: Approve the requests.

Action: *Approved requests on a 3-0 vote.*

Issues for Discussion / Vote

Issue 1: Workforce Investment Act – (May Revision Requests)

Description: The Administration submitted two May Revision requests that relate to changes in federal funding for the Workforce Investment Act (WIA) Program.

- **Baseline Funding Adjustments:** The Administration indicates that the 2006 Congressional Rescissions and other federal program changes result in the need to decrease 2005-06 budgeted funding by \$108,000 for state operations and by \$1.4 million for local assistance. The Administration requests an increase of \$351,000 in 2006-07 state operations in order for EDD to utilize WIA Disability Program Navigator grants.
- **WIRED Grant:** The federal Department of Labor selected the California Space Authority (CSA), a non-profit organization representing the commercial, civil, and national defense/homeland security interests of California's space enterprise community, to receive \$15 million in funds over a three-year period. The May Revision Finance Letter indicates that \$300,000 of the total would be used for state operations. In addition to the federal grant of \$15 million, the Administration intends to target up to \$1.0 million in WIA discretionary money and up to \$2.0 million in Employment Training Fund money to support the project. The intent of the federal program is to foster the development of high-skill and high-wage opportunities in regions that have been affected by global trade, are dependent on a single industry, or are recovering from natural disaster. Note: The Administration requested and received approval to accept first year grant funding of \$5 million in 2005-06 via a March 7, 2006, Section 28.00 letter.

LAO Recommendation: The LAO recommends the adoption of budget bill language to direct, and require reporting for, any budget reductions caused by cuts in federal WIA funding. The federal government has not yet released the state allocations for the fiscal year, so this information is not available with the May Revision. It is anticipated that as in the past few years, the federal allocation will be decreased. EDD will need to make corresponding reductions in the WIA 15 percent discretionary funds appropriation.

Item 7100-001-0869: *(Follows current provision 1.5) For Schedules (2), (3), and (4); In the event that the Employment Development Department is notified of a reduction in Federal Workforce Investment Act (WIA) 15 percent discretionary funds, the Department of Finance may decrease expenditure authority for schedules (2) through (4) inclusive. Any such decrease that exceeds two-hundred fifty thousand dollars (\$250,000) may be authorized not sooner than 30 days after notification in writing is provided to the chairpersons of the committees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance determine.*

Staff Recommendation: Approve the requests with the LAO budget bill language.

Action: *Approved requests, and adopted LAO budget bill language, on a 3-0 vote. The Department will provide the Subcommittee with additional detail on WIA expenditures.*

Issue 2: Employment Training Panel Funding (BCP #1)

Description: The Administration requests an augmentation of \$5.0 million (Employment Training Fund) for the Employment Training Panel (ETP) program and a corresponding reduction of \$5.0 million (Employment Training Fund) for the Department of Social Services' CalWORKs program.

Detail / Background: The Employment Training Panel was created in 1982 to improve the skills of California's workforce and retain businesses in the state. The ETP is funded through the Employment Training Tax, a special tax which is levied on employers who participate in the Unemployment Insurance Program. Historically, revenue has annually averaged \$70 million to \$100 million. The ETP program primarily funds "employer-focused" job training – more than 90 percent of ETP supports training of incumbent workers. The ETP indicates that every \$1 million in ETP training funding, supports more than 85 business and 800 workers, primarily in the manufacturing and high-tech sectors. The following table shows how Employment Training Fund money has been distributed between ETP and CalWORKs in recent years (\$ in millions).

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07*
ETP Appropriation	\$75.8	\$76.0	\$76.0	\$18.2	\$44.0	\$37.8	\$40.3
Percent to ETP	65%	51%	65%	22%	48%	44%	50%
CalWORKS Appropriation	\$30.0	\$61.7	\$30.0	\$56.4	\$40.0	\$37.9	\$32.9
Percent to CalWORKS	26%	41%	26%	68%	43%	44%	40.5%

* Proposed

Staff Comment: This issue was discussed at both the April 27 hearing on Labor Departments and at the May 4 hearing when the Department of Social Services and CalWORKs were heard.

In addition to the \$5 million shift requested, the California Chamber of Commerce and business groups have requested that the remaining \$32.9 million in CalWORKs also be shifted back to ETP.

Staff Recommendation: Restore full program funding to the Employment Training Panel. Augment the Employment Training Panel appropriation by \$32.9 million.

Action: *Approved staff recommendation to restore all Employment Training Funds to the Employment Training Panel. (This would augment the Employment Training Panel appropriation by \$32.9 million and decrease the Department of Social Services appropriation by \$32.9 million) On a 2-1 vote with Senator Cox voting no.*

7350 Department of Industrial Relations

The EDD was previously heard in Subcommittee #3 on April 27, 2006. One issue was held open and two May Revision requests have been submitted.

Discussion / Vote Issues:**Issue 1: Workers' Compensation – Initial Lien Filing Fees (BCPs #9)**

Description: The Governor requests amendments to the Labor Code related to SB 228, (Chapter 639, Statutes of 2003). Current statute requires that medical-legal providers pay a \$100 filing fee when filing an initial lien on a claim in order to assert their claim for payment for services provided. The Administration indicates this requirement “has created a workload that does not positively impact the settling of claims and instead has created a process that is inefficient for the division and the district offices.” Additionally, the lien fee may be a barrier for legitimate claims by small business such as interpreters, document copy services, and transportation companies. The Administration also proposes to add language to establish a 60-day wait period for the filing of liens to discourage the practice of filing liens before allowing a reasonable period for payment. If the request is denied, the BCP indicates an additional \$294,000 and five new positions would be required to address this workload.

April 27, 2006, Hearing: The California Applicants' Attorney Association (CAAA) testified that they had concerns with the 60-day wait period. The Department of Industrial Relations agreed to work with the CAAA to see if language revisions could be made that would address their concerns. The Subcommittee approved the language that repealed the \$100 fee on a 3-0 vote, but took no action on the language related to the 60-day wait period.

Revised Language: The Administration and the CAAA have drafted revised trailer bill language that is acceptable to both parties (see Attachment I to this agenda). The new language maintains the 60-day wait, but adds other provisions to ensure that the wait period does not reduce the ability of applicants to recover payment.

Recommendation: Approve the revised trailer bill language (Attachment I).

Action: *Approved revised trailer bill language on a 3-0 vote.*

Issue 2: Farm Workers' Contractor Fund (Staff Issue)

Description: The Administration indicates that the current revenue for the Farmworker Remedial Account is not sufficient to pay all anticipated claims over the next two to three years. The Administration has suggested that the Legislature may want to consider the transfer of \$507,000 in the dormant Workplace Health and Safety Revolving Fund to the Farmworker Remedial Account (Issue #3 on the next page relates to an alternative use of this \$507,000). This would provide funding to pay expected future claims for the next five years.

Background: Labor Code Section 1684 requires a farm labor contractor to pay a licensing fee of \$500 plus a \$10 filing fee annually. It requires the Labor Commissioner to deposit \$50 of the licensing fee to the Farmworker Remedial Account to compensate applicant farmworkers for unpaid and unrecoverable wages. The remaining \$450 of the \$500 fee goes to the General Fund. Annually, the fees provide about \$70,000 to the Farmworker Remedial Account. The 2005 Budget Act included an appropriation of \$102,000 for the payment of wage claims. On November 14, 2005, the Administration submitted a deficiency request to the Legislature to make \$338,000 in the fund available for claims. The Administration now estimates expenditures will only total \$202,000 in 2005-06. With annual revenues anticipated at \$70,000, and claims estimated at \$202,000 ongoing, the fund needs additional revenues to fully fund claims.

Staff Comment: This issue is somewhat analogous to the issue the Subcommittee heard on April 27 regarding the Garment Fund Unpaid Wage Claims. In both cases, claims are exceeding 2005-06 appropriations, and any significant increase in expenditure authority can only come through enactment of deficiency legislation. Like the Garment Fund issue, the Administration has proposed budget bill language to fix the problem for 2006-07 by allowing DIR to expend fund balances beyond the appropriation level with approval of the Director of Finance and Legislative notification. A second issue for the Farmworker Remedial Account is insufficient revenues. AB 3054, as introduced, would increase license fees and increase the portion of fees transferred to the Farmworker Remedial Account to \$200. Since the passage of AB 3054 is uncertain, the Subcommittee may want to consider transferring some of the Workplace Health and Safety Revolving Fund to the Farmworker Remedial Account.

Recommendation: Hold action on this issue until Issue #3 on the next page is heard, then take a combined action on both issues.

Action: *See next issue for combined action.*

**Issue 3: Transfer of Workplace Health and Safety Revolving Fund
(Administration Trailer Bill Language Request)**

Description: The Administration requests trailer bill language to transfer the \$507,000 fund balance of the dormant Workplace Health and Safety Revolving Fund to the Workers' Compensation Administration Revolving Fund.

Background: In 1989, the Legislature created the Workplace Health and Safety Revolving Fund and directed the Department to deposit into the fund civil and administrative penalties against workers' compensation insurers, self-insured employers, and others for failure to comply with the workers' compensation system. Assembly Bill 749 (Chapter 6, Statutes of 2002, Calderon), redirects the civil and administrative penalties previously deposited in the Workplace Health and Safety Revolving Fund to the larger Workers' Compensation Administration Revolving Fund, which became the primary source of funds for the Division of Workers' Compensation. Post AB 749, the Workplace Health and Safety Revolving Fund is no longer an active fund; however, the current account balance is \$507,000.

LAO Recommendation: In the *Analysis of the 2006-07 Budget Bill*, the LAO recommends that the \$507,000 be transferred to the General Fund instead of the Workers' Compensation Administration Revolving Fund. The LAO notes that the Workers' Compensation Administration Revolving Fund will maintain a \$65 million fund balance at the end of 2006-07, and the fund balance of the Workplace Health and Safety Revolving Fund was accumulated during the years in which the General Fund provided the bulk of Division of Workers' Compensation funding.

April 27, 2006, Hearing: The Subcommittee held this issue open pending decisions on other staffing and funding proposals.

Staff Comment: The Administration has suggested a new alternative for the \$507,000, which was described in Issue #2 on the prior page. The new alternative is to adopt trailer bill language to transfer the balance to the Farmworker Remedial Account.

Staff Recommendation:

- Transfer \$200,000 from the Workplace Health and Safety Revolving Fund to the Farmworker Remedial Account (this should provide a sufficient fund balance in the Farmworker Remedial Account to fully address anticipated claims through 2007-08).
- Transfer the remaining \$307,000 from the Workplace Health and Safety Revolving Fund to the General Fund.

Action: *Approved Staff Recommendation on a 3-0 vote.*

Attachment A

Lien Filing Fee Budget Trailer Bill Language

Revised Language – supported by the Administration and California Applicants' Attorney Association

Labor Code sections 4603.2 and 4903.05 are amended as follows:

Amendments to Labor Code section 4603.2. (b) (1)

(b) (1) Except as provided in subdivision (d) of Section 4603.4, or under contracts authorized under Section 5307.11, payment for medical treatment provided or authorized by the treating physician selected by the employee or designated by the employer shall be made at reasonable maximum amounts in the official medical fee schedule, pursuant to Section 5307.1, in effect on the date of service. Payments shall be made by the employer within 45 working days after receipt of each separate, itemization of medical services provided, together with any required reports and any written authorization for services that may have been received by the physician. If the itemization or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the itemization is contested, denied, or considered incomplete, within 30 working days after receipt of the itemization by the employer. A notice that an itemization is incomplete shall state all additional information required to make a decision. Any properly documented list of services provided not paid at the rates then in effect under Section 5307.1 within the 45-working-day period shall be increased by 15 percent, together with interest at the same rate as judgments in civil actions retroactive to the date of receipt of the itemization, unless the employer does both of the following:

(A) Pays the provider at the rates in effect within the 45-working-day period.

(B) Advises, in the manner prescribed by the administrative director, the physician, or another provider of the items being contested, the reasons for contesting these items, and the remedies available to the physician or the other provider if he or she disagrees. In the case of an itemization that includes services provided by a hospital, outpatient surgery center, or independent diagnostic facility, advice that a request has been made for an audit of the itemization shall satisfy the requirements of this paragraph.

~~If an employer contests all or part of an itemization, any amount determined payable by the appeals board shall carry interest from the date the amount was due until it is paid. If any contested itemization is determined payable by the appeals board, the defendant shall be ordered to reimburse the provider for any filing fees paid pursuant to Section 4903.05.~~

An employer's liability to a physician or another provider under this section for delayed payments shall not affect its liability to an employee under Section 5814 or any other provision of this division.

Repeal Labor Code section 4603.5.

~~§4903.05 (a) A filing fee of one hundred dollars (\$100) shall be charged for each initial lien filed by providers, or on behalf of providers, pursuant to subdivision (b) of Section 4903.~~

~~—(b) No filing fee shall be required for liens filed by the Veterans Administration, the Medi-Cal program, or public hospitals.~~

~~—(c) The filing fee shall be collected by the court administrator. All fees shall be deposited in the Workers' Compensation Administration Revolving Fund. Any fees collected from providers that have not been redistributed to providers pursuant to paragraph~~

~~(2) of subdivision (b) of Section 4603.2, shall be used to offset the amount of fees assessed on employers under Section 62.5.~~

~~—(d) The court administrator shall adopt reasonable rules and regulations governing the procedures for the collection of the filing fee.~~

Add Labor Code section 4603.5.

4903.05(a) Except as necessary to comply with Section 4903.5, no lien claim or application for adjudication shall be filed under subdivision (b) of Section 4903 until the expiration of one of the following:

(1) Sixty (60) days after the date of acceptance or rejection of liability for the claim, or expiration of the time provided for investigation of liability pursuant to subdivision (b) of Section 5402, whichever date is earlier;

(2) The time provided for payment of medical treatment bills pursuant to Section 4603.2;

(3) The time provided for payment of medical-legal expenses pursuant to Section 4622.

(b) No declaration of readiness to proceed shall be filed for a lien under subdivision (b) of Section 4903 until the underlying case has been settled by way of a compromise and release or where the applicant chooses not to proceed with his or her case.

(c) The Workers' Compensation Appeals Board (WCAB) shall adopt reasonable rules and regulations to ensure compliance with this section, and shall take such further steps as may be necessary to enforce the rules and regulations, including, but not limited to, impositions of sanctions pursuant to Section 5813.

(d) The limitations imposed by this section shall not apply to lien claims, applications for adjudication, or declarations of readiness to proceed filed by or on behalf of the employee, or to such filings by or on behalf of the employer.

Agenda – Part “B” ADDENDUM

7350 Department of Industrial Relations

Issue 4: CalOSHA Staffing (Staff Issue)

Description: The Department indicates that there are 235 authorized staff in the California Occupational Safety and Health Administration (CalOSHA), that the resulting ratio of CalOSHA inspectors to the civilian workforce is about 1:74,103. Advocates for the California Association of Professional Scientists suggest that California’s staffing ratio is below that of other states and the Subcommittee should augment CalOSHA staffing.

April 27, 2006, Hearing: The Subcommittee heard testimony on this issue at the April 27 hearing and requested that the LAO research the issue and present their findings at the next hearing.

Detail/Background: The Department indicates, and has provided data that demonstrates, that the California staffing to employment ratio is about the same as the average for those states that use federal OSHA inspectors. When the ratios are compared to states which, like California, utilize state staff for OSHA inspector, California falls below the staffing average. The average ratio for the state-run programs is 1:50,166.

Staff Comment: Upon request, the Department provided data to indicate that 10 new positions could be added if funding were augmented by \$1 million.

Questions:

1. LAO: Please present your findings on this issue.

Staff Recommendation: Augment the Department’s budget by \$1.0 million to add 10 new CalOSHA positions.

Action: *Approved Staff Recommendation on a 2-1 vote, with Senator Cox voting no.*